

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAREAL EDWARDS,

Case No. 2:15-cv-00673-JAD-NJK

Petitioner

v.

JO GENTRY, et al.,

Respondents

and related case

JAREAL EDWARDS,

Case No. 2:20-cv-00520-JAD-DJA

Petitioner

v.

WARDEN HOWELL, et al.,

Respondents

**Order Consolidating Cases, Reopening
Case, and Denying Motion for
Appointment of Counsel**

Petitioner Jareal Edwards, a *pro se* Nevada prisoner, has commenced two habeas actions under 28 U.S.C. § 2254 in the District of Nevada¹ challenging a 2013 state-court conviction and sentence.² In March 2020, he filed a new habeas petition and motion for appointment of counsel.³ Because I find that Edwards's two habeas actions involve common questions of law and fact and good cause exists, I consolidate the cases and reopen the earlier-filed case. I also deny his renewed motion for appointment of counsel without prejudice.

Background

In February 2013, Edwards pled guilty in Nevada state court to one count each of conspiracy to commit robbery, robbery with use of a deadly weapon, and first-degree

¹ Case Nos. 2:15-cv-00673-JAD-NJK; 2:20-cv-00520-JAD-DJA.

² *State of Nevada v. Edwards*, Case No. C-12-280797-3.

³ Case No. 2:20-cv-00520-JAD-DJA, ECF Nos. 1-1, 1-2.

1 kidnapping.⁴ A judgment of conviction was entered on August 13, 2013,⁵ and his one-year
 2 period for filing an appeal or state petition for writ of habeas corpus began to run. Without filing
 3 a direct appeal of his criminal case, Edwards filed a state habeas petition seeking post-conviction
 4 relief on June 16, 2014, which was denied.⁶ The Nevada Supreme Court affirmed that denial
 5 and then issued a remittitur on April 7, 2015.⁷

6 Edwards filed a federal habeas petition on April 13, 2015.⁸ Of the four grounds for relief
 7 that he pled in his federal petition, only one was exhausted, so I gave him three options: (1)
 8 abandon the three unexhausted claims and proceed on the exhausted claim; (2) return to state
 9 court to exhaust the three claims, and I would deny the federal petition without prejudice to his
 10 ability to refile it; or (3) file a motion to stay and abey the exhausted federal habeas claims while
 11 he exhausts his claims in state court.⁹ Edwards chose the third option and moved to stay this
 12 federal petition pending exhaustion of his unexhausted claims.¹⁰ I granted his request in
 13 September 2017.¹¹ Edwards was instructed to “move to reopen this case no later than 45 days
 14 after exhaustion of his claims” and, if he intends to further amend his petition, “file a motion for
 15 leave to amend along with the proposed verified amended petition.”¹² I explained that the case
 16 was administratively closed but could be reopened after exhaustion so it would “then proceed
 17 under the current docket number.”¹³

18
 19 ⁴ I take judicial notice of the proceedings in Edwards’s criminal and post-conviction matters in
 20 the Eighth Judicial District Court and Nevada appellate courts. The docket records of these
 21 courts may be accessed by the public online at:

22 <https://www.clarkcountycourts.us/Anonymous/default.aspx> and
 23 <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

24 ⁵ *Id.*

25 ⁶ *Id.*

26 ⁷ *Id.*

27 ⁸ Case No. 2:15-cv-00673-JAD-NJK, ECF No. 1.

28 ⁹ *Id.*, ECF No. 9.

¹⁰ *Id.*, ECF No. 12.

¹¹ *Id.*, ECF No. 15.

¹² *Id.* at 6.

¹³ *Id.*

1 While the federal habeas matter was pending, Edwards went back to state court and filed
 2 additional post-conviction petitions.¹⁴ Those petitions were denied. He appealed the denials, but
 3 the Nevada Court of Appeals affirmed the state court's rulings.¹⁵

4 On March 12, 2020, Edwards filed a new habeas petition and motion for appointment of
 5 counsel.¹⁶ He provided the earlier case number when answering whether the new petition is "the
 6 first federal petition for writ of habeas corpus challenging this conviction."¹⁷

7 Discussion

8 Having reviewed the records in Edwards's cases, I construe his new habeas petition as a
 9 request to reopen the earlier habeas case and file an amended petition. I find that the actions
 10 involve common questions of law and fact and that good cause exists for consolidation.¹⁸ The
 11 practice in this district is to assign consolidated cases to the "judge to whom the earliest-filed
 12 action is assigned."¹⁹ Because I am the district judge assigned to the earlier-filed case, the
 13 assignment in the consolidated cases will not change. Once the earlier-filed case is reopened, a
 14 new scheduling order will issue.

15 Turning to Edwards's motion for appointment of counsel, I find no basis to appoint
 16 counsel, and I deny the motion. There is no constitutional right to appointed counsel in a federal
 17 habeas corpus proceeding.²⁰ However, an indigent petitioner seeking relief under 28 U.S.C.
 18 § 2254 may request the appointment of counsel to pursue that relief,²¹ and the court has
 19 discretion to appoint counsel when the interests of justice so require.²² The interests of justice so

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 21 ¹⁴ See *State of Nevada v. Edwards*, Case No. C-12-280797-3, available at
<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=9248216>.

22 ¹⁵ See *Edwards v. State*, Case Nos. 72555, 73115, 78181, available at
<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

23 ¹⁶ Case No. 2:20-cv-00520-JAD-DJA, ECF Nos. 1-1, 1-2.

24 ¹⁷ ECF No. 1-1 at 2.

25 ¹⁸ See Fed. R. Civ. P. 42(a).

26 ¹⁹ LR 42-1(b).

27 ²⁰ See *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S.
 28 327, 336–37 (2007)).

²¹ 18 U.S.C. § 3006A(a)(2)(B).

²² *Id.*

1 require “when the complexities of the case are such that denial of counsel would amount to a
 2 denial of due process.”²³ In the absence of such circumstances, a request for counsel is
 3 addressed to the sound discretion of the district court.²⁴ When a habeas petitioner has a good
 4 understanding of the issues and the ability to present forcefully and coherently his contentions,
 5 no attorney is legally required.²⁵

6 This is the second time that Edwards has requested appointed counsel.²⁶ I denied the first
 7 request because his original petition was well-written and sufficiently clear in presenting his
 8 claims and the issues in this case are not complex; thus, he did not establish that the interests of
 9 justice require appointed counsel.²⁷ Edwards’s current motion fails to present any change in
 10 circumstances under the “interests of justice” standard. Using a form motion without providing
 11 any facts specific to his situation, Edwards alleges that “the issues in this case are complex and
 12 [he] is unable to adequately present the claims without the assistance of counsel.”²⁸ This
 13 conclusory allegation does not show why denial of counsel would amount to a denial of due
 14 process. The new habeas petition is sufficiently clear in presenting the issues Edwards wishes to
 15 bring, and the issues in this case are not particularly complex. The motion is thus denied.

16 Conclusion

17 IT IS THEREFORE ORDERED that Edwards’s Motion for Appointment of Counsel
 18 [ECF No. 1-2] in 2:20-cv-00520-JAD-DJA is DENIED.

19 IT IS FURTHER ORDERED THAT the Clerk of Court is directed to:

- 20 • REOPEN Case No. 2:15-cv-00673-JAD-NJK and CONSOLIDATE it with Case
 21 No. 2:20-cv-00520-JAD-DJA. The earlier-filed action, Case No. 2:15-cv-00673-
 22 JAD-NJK, is the base case, and all future filings must use the base case number.
 23

24 ²³ *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980).

25 ²⁴ *Id.* (citing *Dillon v. United States*, 307 F.2d 445, 447 (9th Cir. 1962)).

26 ²⁵ *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987).

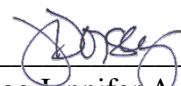
27 ²⁶ Case No. 2:15-cv-00673-JAD-NJK, ECF No. 1-1 at 3.

28 ²⁷ *Id.*, ECF No. 4 at 2.

²⁸ Case No. 2:20-cv-00520-JAD-DJA, ECF No. 1-2 at 2.

- SUBSTITUTE Warden Howell for Jo Gentry as the main respondent in the base case.
- DESIGNATE Edwards's petition for writ of habeas corpus, filed March 12, 2020, in 2:20-cv-00520-JAD-DJA as the operative pleading and designate it as the "Second Amended Petition for Writ of Habeas Corpus" in the base case.
- ADMINISTRATIVELY CLOSE the latter-filed action, Case No. 2:20-cv-00520-JAD-DJA.

Dated: May 20, 2020



U.S. District Judge Jennifer A. Dorsey